



Connecticut Business & Industry Association

TESTIMONY OF
ERIC GEORGE
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION
BEFORE THE
JUDICIARY COMMITTEE
LEGISLATIVE OFFICE BUILDING
MARCH 20, 2009

My name is Eric George and I am Associate Counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents approximately 10,000 businesses throughout Connecticut, the vast majority of which are small companies employing fewer than 50 people.

I am here to register CBIA's concerns over **SB 1004, AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS AND STANDARDS IN CONTRACTS BETWEEN HEALTH INSURERS AND HEALTH CARE PROVIDERS**. As drafted, **SB 1004** advances the interests of health care practitioners at the cost of health care patients and consumers. This would have implications for both workers' compensation costs and health care costs.

Cooperative Health Care Arrangements

SB 1004 would exempt health care providers from Connecticut's protective antitrust laws.

Because antitrust laws are so fundamental to protecting consumers, exemptions to the laws are very limited. Such exemptions include: (a) bona fide organizations of employees; and (b) the promotion of legitimate labor interests. However, **SB 1004** would exempt from antitrust laws independent, competing contractors – not employees. And it would exempt individual entrepreneurial interests – not labor interests. It would allow some independent contractors – doctors and other health care providers – to collectively exert economic pressure on health plans to gain higher fees. **SB 1004** promotes one sector of the health care system – health care providers – at the cost of health care consumers.

By creating an exception to antitrust laws for health care providers, **SB 1004** removes the fundamental and essential consumer protections contained in those laws. It protects health care providers at the cost of health care consumers. As noted by the Assistant Attorney General, Antitrust Division of the U.S. Department of Justice in opposing such exceptions at the federal level:

Our investigations reveal that when health care professionals jointly negotiate with health insurers, without regard to antitrust laws, *they typically seek to significantly increase their fees, sometimes by as much as 20-40%*. . . Providers have their own self-interests, and our enforcement actions and other experience suggest that their actions may not be congruent with the interests of consumers [emphasis added]. (Testimony before the House Judiciary Committee, June 22, 1999).

Standards in Contracts

SB 1004 also dictates contract provisions in the contracts between practitioners and health insurers, including prohibitions against unilateral contracts. **SB 1004** advances the interests of one independent contracting party in the health care system over another as it dictates the provisions that must be excluded from contracts between health plans and health care providers. **SB 1004** creates a situation where state statute usurps the will of private parties in determining contract terms and provisions, inappropriately intruding into the health care system.

It would be inappropriate for the state to weigh-in on the side of health providers in setting the terms of provider/plan contracts, particularly in light of their recent economic history. Data indicates that health care providers are already calling the shots in contract negotiations with health plans. In a January 2004 Issue Brief published by The Center for Studying Health System Change, the authors make these observations about health care providers negotiating power:

A number of forces converged in the late 1990's to give certain providers . . . significant bargaining leverage over health plans. By 2000, many providers were pushing plans for large payment rate increases and more favorable contract terms . . . to recover ground previously lost to health plans . . . Providers' negotiating success emboldened other providers to push back . . . In 2002-03, . . . plans accommodated providers' demands to avoid the negative consequences of bitter and protracted disputes. The lull in showdowns reflects, in part, a *growing recognition by plans that the balance of power now clearly favors providers* [emphasis added].

Providers are not in need of state protection to further advance their leverage in contracts with health care plans.

Thank you for considering my remarks and concerns with **SB 1004**.